



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF:

DEC 28 2006

AE-17J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Scott Wing, Plant Manager
TES Filer City Station
700 Mee Street
Filer City, Michigan 49634

Re: Notice of Violation
Finding of Violation
TES Filer City Station
Filer City, Michigan

Dear Mr. Wing:

This is to advise you that the United States Environmental Protection Agency (U.S. EPA) has determined that TES Filer City Station (TES or you) at 700 Mee Street, Filer City, Michigan, is in violation of the Clean Air Act (CAA); its Title V permit; 40 C.F.R. Part 70; the Michigan State Implementation Plan (SIP); the New Source Performance Standards (NSPS) for Electric Utility Steam Generating Units for which Construction Commenced after September 18, 1978 at 40 C.F.R. Part 60, Subpart Da; and the Prevention of Significant Deterioration (PSD) regulations at 40 C.F.R. § 52.21, as provided below. We are today issuing to you a Notice of Violation (NOV)/Finding of Violation (FOV).

The CAA requires the development of Primary and Secondary National Ambient Air Quality Standards to protect public health and welfare. To attain and maintain these standards, each State is required to develop an implementation plan. In addition, U.S. EPA has established the NSPS, which are nationally uniform emission standards for new stationary sources falling within particular industrial categories. Specifically, on June 11, 1979, U.S. EPA promulgated the NSPS for Electric Utility Steam Generating Units for which Construction Commenced after September 18, 1978 at 40 C.F.R. Part 60, Subpart Da (Subpart Da). 44 Fed. Reg. 33613 (June 11, 1979). And, on June 19, 1978, U.S. EPA promulgated the PSD regulations at 40 C.F.R.

§ 52.21 pursuant to Part C, Subpart I of the CAA. 43 Fed. Reg. 26403 (June 19, 1978). TES has violated the following requirements of its Title V permit, including applicable incorporated Michigan SIP, NSPS, and PSD requirements:

1) The charge rate of petroleum coke in each boiler shall not exceed 130,800 pounds per operating day, as stated in the Title V permit.

2) Visible emissions (VE) from each boiler shall not exceed a 6-minute average of 10 percent opacity, as stated in the Title V permit. U.S. EPA considers compliance with this limit as compliance with R336.1301(1)(c) of the Michigan SIP, 40 C.F.R. § 60.42Da(b) of Subpart Da, and 40 C.F.R. § 52.21(j) of the PSD regulations. The purpose of this limit is to help protect the public from unhealthy exposure to particulate matter emissions. Particulate emissions contribute to respiratory problems, lung damage, and premature death.

3) Sulfur dioxide (SO₂) emissions from each boiler shall not exceed 0.7 pounds per million British Thermal Unit heat input, based on a 24-hour daily average, as stated in the Title V permit. The purpose of this limit is to help protect the public from unhealthy exposure to SO₂. Long term exposure to high levels of SO₂ gas and particles can cause respiratory illness and aggravate existing heart disease. SO₂ reacts with other chemicals in the air to form tiny sulfate particles, which, when inhaled, gather in the lungs and contribute to increased respiratory symptoms and disease, difficulty in breathing, and premature death.

4) TES must observe for VE from the lime storage and handling, the ash/by-products unloading, and the fuel storage systems, as stated in the Title V permit. If TES observes VE, it shall note the following in the operations log: a) the color of the VE; b) whether the VE are representative of normal emissions; c) if the VE are not representative of normal operations, the cause of the abnormal VE; d) the total duration of any abnormal VE incident; and e) any corrective action taken to eliminate the abnormal VE.

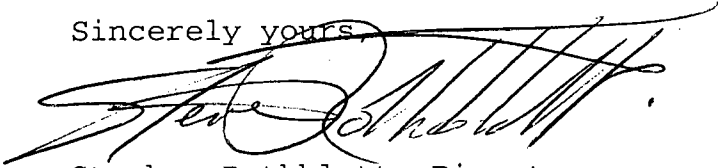
U.S. EPA finds that TES has violated the above requirements. Section 113 of the CAA gives us several enforcement options to resolve these violations, including: issuing an administrative compliance order, issuing an administrative penalty order, bringing a judicial civil action, and bringing a judicial

criminal action. The option we select, in part, depends on the efforts taken by TES to correct the alleged violations and the timeframe in which you can demonstrate and maintain continuous compliance with the requirements cited in the NOV/FOV.

Before we decide which enforcement option is appropriate, we are offering you the opportunity to request a conference with us about the violations alleged in the NOV/FOV. This conference will provide you a chance to present information on the identified violations, any efforts you have taken to comply, and the steps you will take to prevent future violations. Please plan for your facility's technical and management personnel to take part in these discussions. You may have an attorney represent and accompany you at this conference.

The U.S. EPA contact in this matter is Ray Cullen. You may call him at (312) 886-0538 if you wish to request a conference. U.S. EPA hopes that this NOV/FOV will encourage TES's compliance with the requirements of the CAA.

Sincerely yours,

A handwritten signature in dark ink, appearing to read "Stephen Rothblatt", with a stylized, sweeping flourish extending from the end of the name.

Stephen Rothblatt, Director
Air and Radiation Division

Enclosure

cc: Janis Denman, Supervisor
Michigan Department of Environmental Quality
Air Quality Division
Cadillac District
120 West Chapin Street
Cadillac, Michigan 49601-2158

Tom Hess, Enforcement Unit Supervisor
Michigan Department of Environmental Quality
Air Quality Division
525 West Allegan
P.O. Box 30260
Lansing, Michigan 48909-7760

Protecting the environment is everyone's responsibility. Help EPA fight pollution by reporting possible harmful environmental activity. To do so, visit EPA's website at <http://www.epa.gov/compliance/complaints/index.html>.

United States Environmental Protection Agency
Region 5

| | | |
|---------------------------|---|-------------------------|
| IN THE MATTER OF: |) | |
| |) | |
| TES Filer City Station |) | NOTICE OF VIOLATION AND |
| Filer City, Michigan |) | FINDING OF VIOLATION |
| |) | |
| |) | EPA-5-07-MI-04 |
| Proceedings Pursuant to |) | |
| the Clean Air Act, |) | |
| 42 U.S.C. §§ 7401 et seq. |) | |
| |) | |

NOTICE OF VIOLATION

TES Filer City Station (TES or you) owns and operates a 54 megawatt cogeneration facility with two spreader stoker boilers at 700 Mee Street, Filer City, Michigan. Since 1990, TES has been a major source as defined in 40 C.F.R. Part 70 and 40 C.F.R. § 52.21(b)(1)(i)(a), the Prevention of Significant Deterioration (PSD) regulations, and has been subject to these regulations, along with the Michigan State Implementation Plan (SIP) and the New Source Performance Standards (NSPS) for Electric Utility Steam Generating Units for which Construction Commenced after September 18, 1978 at 40 C.F.R. Part 60, Subpart Da (Subpart Da).

The United States Environmental Protection Agency (U.S. EPA) is sending this Notice of Violation (NOV)/Finding of Violation (FOV) to you for 1) exceeding the petroleum coke (petcoke) charge rate limit of your Title V permit in each boiler; 2) exceeding the visible emissions (VE) opacity limits of your Title V permit, R336.1301(1)(c) of the Michigan SIP, and 40 C.F.R. § 60.42Da(b) of Subpart Da for each boiler; 3) exceeding the sulfur dioxide (SO₂) emissions limit of your Title V permit for each boiler; and 4) failing to properly record VE observations from the lime storage and handling, the ash/by-products unloading, and the fuel storage systems in accordance with your Title V permit.

You may request a conference with us to discuss the violations alleged in the NOV/FOV. This conference will provide you a chance to present information on the identified violations, any

efforts you have taken to comply, and the steps you will take to prevent future violations. Please plan for your facility's technical and management personnel to take part in these discussions. You may have an attorney accompany and represent you at this conference.

Explanation of Violations

1. The regulatory authority and facility requirements relevant to this NOV/FOV are as follows:

- a. Title V of the Clean Air Act (CAA), 42 U.S.C. §§ 7661a-7661f, establishes an operating permit program for certain sources, including "major sources." Pursuant to Section 502(b) of the CAA, 42 U.S.C. § 7661a(b), on July 21, 1992, U.S. EPA promulgated regulations establishing the minimum elements of a permit program to be administered by any air pollution control agency. 57 Fed. Reg. 32295 (July 21, 1992). These regulations are codified at 40 C.F.R. Part 70.
- b. 40 C.F.R. § 70.2 defines "major source," in part, as any stationary source belonging to a single major industrial grouping and that directly emits or has the potential to emit 100 tons per year (tpy) of any air pollutant.
- c. 40 C.F.R. § 70.7(b) states that no source subject to Title V may operate the source except in compliance with a Title V permit.
- d. Section 502(a) of the CAA, 42 U.S.C. § 7661a(a), states that after the effective date of any permit program approved or promulgated under Title V of the CAA, no source subject to Title V may operate the source except in compliance with its Title V permit.
- e. Section 165(a)(1) of the CAA, 42 U.S.C. § 7475(a)(1), states that a facility shall comply with emissions limitations within permits issued under, and conforming with, the requirements of Part C.
- f. U.S. EPA granted full approval to the Michigan Title V operating permit program on December 4, 2001. 66 Fed. Reg. 62949 (December 4, 2001). The program became effective on November 30, 2001.

- g. The Michigan Department of Environmental Quality (MDEQ) issued Renewable Operating Permit (Title V permit) No. 199600181 to TES with an effective date of September 9, 2002.
- h. Table F-1.1 FGBOILERS of TES's Title V permit states that the charge rate of petcoke in each boiler shall not exceed 130,800 pounds per operating day (lbs/day). See also Supp. to Permit No. 519-87F.
- i. Table F-1.1 FGBOILERS of TES's Title V permit states that VE from each boiler shall not exceed a 6-minute average of 10 percent opacity. See also Supp. to Permit No. 519-87F. It also states that compliance with this limit shall be considered compliance with R336.1301(1)(c) of the Michigan SIP, 40 C.F.R. § 52.21(j), and 40 C.F.R. § 60.42Da(b).
- j. On June 11, 1992, U.S. EPA approved R336.1301 as part of the federally enforceable Michigan SIP. 57 Fed. Reg. 24752 (June 11, 1992). On December 29, 2005 and June 1, 2006, R336.1301 was revised. 70 Fed. Reg. 77113 (December 29, 2005) and 71 Fed. Reg. 31093 (June 1, 2006). On July 3, 2006, the latest revision of R336.1301 became federally effective.
- k. R336.1301(1)(c) of the Michigan SIP states that a person shall not cause or permit to be discharged into the outer air from a process or process equipment VE of a density greater than a limit specified as a condition of a permit to install or permit to operate.
- l. 40 C.F.R. § 52.21(j) states that a major stationary source or major modification shall meet each applicable emissions limitation under the SIP and each applicable emissions standard and standard of performance under 40 C.F.R. Parts 60 and 61.
- m. 40 C.F.R. § 52.21(b)(1)(i)(a) defines "major stationary source," in part, as a stationary source of air pollutants which emits, or has the potential to emit, 100 tpy or more of any pollutant subject to regulation under the CAA and includes fossil fuel-fired boilers of more than 250 million British Thermal Units (MMBTU) per hour heat input.

- n. Pursuant to Section 111(b) of the CAA, 42 U.S.C. § 7411(b), on June 11, 1979, U.S. EPA promulgated Subpart Da at 40 C.F.R. Part 60, Subpart Da (40 C.F.R. §§ 60.40Da through 60.49Da). 44 Fed. Reg. 33613 (June 11, 1979).
- o. 40 C.F.R. § 60.42Da(b) states that on and after the date the particulate matter performance test required to be conducted under Section 60.8 is completed, no owner or operator subject to the provisions of Subpart Da shall cause to be discharged into the atmosphere from any affected facility any gases which exhibit greater than 20 percent opacity (6-minute average), except for one 6-minute period per hour of not more than 27 percent opacity.
- p. Table F-1.1 FGBOILERS of TES's Title V permit states that the SO₂ emission rate from each boiler shall not exceed 0.7 lbs/MMBTU heat input, based on a 24-hour daily average. See also Supp. to Permit No. 519-87F.
- q. Table E-1.1 EULIMESTORAGE of TES's Title V permit states that TES shall observe the exhaust from the lime handling baghouse stack for VE while the system is operating, at least once each time the silo is being filled. If TES observes VE, it shall note the following in the operations log: a) the color of the VE; b) whether the VE are representative of normal emissions; c) if the VE are not representative of normal operations, the cause of the abnormal VE; d) the total duration of any abnormal VE incident; and e) any corrective action taken to eliminate the abnormal VE.
- r. Table E-1.2 EUASHUNLOAD of TES's Title V permit states that TES shall observe the exhaust from the ash unloading baghouse stack for VE, at least once each day that the ash unloading system is operating. If TES observes VE, it shall note the following in the operations log: a) the color of the VE; b) whether the VE are representative of normal emissions; c) if the VE are not representative of normal operations, the cause of the abnormal VE; d) the total duration of any abnormal VE incident; and e) any corrective action taken to eliminate the abnormal VE.

s. Table F-1.2 FGFUELSTORAGE of TES's Title V permit states that TES shall observe the exhaust from the coal handling equipment and the exhaust from the wood handling baghouse stack for VE, at least once each day that the coal handling or wood handling system is operating. If TES observes VE, it shall note the following in the operations log: a) the color of the VE; b) whether the VE are representative of normal emissions; c) if the VE are not representative of normal operations, the cause of the abnormal VE; d) the total duration of any abnormal VE incident; and e) any corrective action taken to eliminate the abnormal VE.

t. 40 C.F.R. § 52.23 states that, among other things, failure to comply with any provision of this part, any approved regulatory provision of a SIP, or with any permit limitation or condition contained within an operating permit issued under an EPA-approved program that is incorporated into the SIP, shall render the person or governmental entity so failing to comply in violation of a requirement of an applicable implementation plan and subject to enforcement action under Section 113 of the CAA.

u. Section 113(a)(1-3) of the CAA, 42 U.S.C. § 7413(a)(1-3), authorizes the Administrator to initiate an enforcement action whenever, on the basis of any available information, the Administrator finds that any person has violated or is in violation of a requirement or prohibition of, among others, any implementation plan or permit, Title I or Title V of the CAA, or any rule promulgated, issued, or approved under Title I or Title V of the CAA.

2. On July 21, 2006, TES submitted facility fuel records from January 1, 2004 through July 20, 2006 to U.S. EPA, as requested by U.S. EPA during its inspection of the facility on July 17-18, 2006. Table A below shows the dates when TES exceeded the petcoke charge rate limit of 130,800 lbs/day of its Title V permit in each boiler, along with the percentage each exceedance was over the limit.

Table A.

| Boiler #1 | | | Boiler #2 | | |
|-----------|-------------------------------|---------------|-----------|-------------------------------|---------------|
| Date | Petcoke Charge Rate (lbs/day) | % Above Limit | Date | Petcoke Charge Rate (lbs/day) | % Above Limit |
| 6/20/05 | 135,569 | 3.65% | 5/31/06 | 153,346 | 17.24% |
| 5/31/06 | 146,722 | 12.17% | 6/2/06 | 158,173 | 20.93% |
| 6/1/06 | 143,078 | 9.39% | 6/3/06 | 144,246 | 10.28% |
| 6/2/06 | 148,888 | 13.83% | 6/4/06 | 144,246 | 10.28% |
| 6/3/06 | 148,557 | 13.58% | | | |
| 6/4/06 | 143,251 | 9.52% | | | |

3. TES's failure to maintain continuous compliance with the petcoke charge rate limit of its Title V permit is a violation of its Title V permit, Section 502(a) of the CAA, 40 C.F.R. § 70.7(b), and 40 C.F.R. § 52.23 and Supp. to Permit No. 519-87F.
4. According to the 2004 and 2005 Quarterly Excess Emission Reports (EERs) TES certified and submitted to MDEQ, TES exceeded the VE opacity limit of its Title V permit (6-minute average of 10 percent opacity), as shown in Table B below.
5. TES's failure to maintain continuous compliance with the VE opacity limit of its Title V permit is a violation of its Title V permit, Sections 502(a) and 165(a)(1) of the CAA, 40 C.F.R. § 70.7(b), R336.1301(c) of the Michigan SIP, 40 C.F.R. § 52.21(j), and 40 C.F.R. § 52.23 and Supp. to Permit No. 519-87F.
6. Expanding on the data compiled in Table B, Table C below shows the duration each quarter when TES also exceeded the VE opacity limit of Subpart Da (6-minute average of 20 percent opacity, except for one 6-minute period per hour of not more than 27 percent opacity).
7. TES's failure to maintain continuous compliance with the VE opacity limit of Subpart Da is a violation of 40 C.F.R. § 60.42Da(b), its Title V permit, Sections 502(a) and 165(a)(1) of the CAA, 40 C.F.R. § 70.7(b), R336.1301(c) of the Michigan SIP, 40 C.F.R. § 52.21(j), and 40 C.F.R. § 52.23.

Table B.

| Boiler #1: | |
|-------------------|--|
| Quarter | Duration of Title V VE Opacity Limit Exceedance (min) |
| 1Q 2004 | 990 |
| 2Q 2004 | 372 |
| 3Q 2004 | 132 |
| 4Q 2004 | 648 |
| 1Q 2005 | 504 |
| 2Q 2005 | 1278 |
| 3Q 2005 | 96 |
| 4Q 2005 | 258 |
| Boiler #2: | |
| Quarter | Duration of Title V VE Opacity Limit Exceedance (min) |
| 1Q 2004 | 1014 |
| 2Q 2004 | 342 |
| 3Q 2004 | 198 |
| 4Q 2004 | 492 |
| 1Q 2005 | 930 |
| 2Q 2005 | 2898 |
| 3Q 2005 | 102 |
| 4Q 2005 | 294 |

Table C.

| Boiler #1 | | Boiler #2 | |
|------------------|---|------------------|---|
| Quarter | Duration of Subpart Da VE Opacity Limit Exceedance (min) | Quarter | Duration of Subpart Da VE Opacity Limit Exceedance (min) |
| 1Q 2004 | 504 | 1Q 2004 | 450 |
| 2Q 2004 | 228 | 2Q 2004 | 180 |
| 3Q 2004 | 72 | 3Q 2004 | 96 |
| 4Q 2004 | 354 | 4Q 2004 | 402 |
| 1Q 2005 | 384 | 1Q 2005 | 798 |
| 2Q 2005 | 948 | 2Q 2005 | 2022 |
| 3Q 2005 | 54 | 3Q 2005 | 60 |
| 4Q 2005 | 156 | 4Q 2005 | 210 |

8. According to the 2004 and 2005 Quarterly EERs TES certified and submitted to MDEQ, along with the Excess SO₂ Emissions Reports dated 4/27/06 and 5/17/06 that TES provided to U.S. EPA during its inspection, TES exceeded the SO₂ emissions limit of its Title V permit (0.7 lbs/MMBTU heat input, based on a 24-hour daily average) on the following dates: 3/28/04, 7/13/04, 7/27/04, 7/30/04, 8/10/04, 8/24/04, 9/7/04, 9/8/04, 9/13/04, 9/14/04, 9/28/04, 10/20/04, 2/18/05, 5/9/05, 5/10/05, 5/12/05, 5/15/05, 4/20/06, 4/21/06, and 4/23/06 for Boiler #1; and 6/9/04, 7/20/04, 7/27/04, 8/3/04, 8/11/04, 9/7/04, 9/15/04, 9/17/04, 10/19/04, 5/8/05, 5/9/05, 5/11/05, 5/13/05, 5/19/05, 4/21/06, and 4/23/06 for Boiler #2.

9. TES's failure to maintain continuous compliance with the SO₂ emission limit of its Title V permit is a violation of its Title V permit, Sections 502(a) and 165(a)(1) of the CAA, 40 C.F.R. § 70.7(b), and 40 C.F.R. § 52.23 and Supp. to Permit No. 519-87F.
10. According to the daily VE observations logs U.S. EPA examined during its inspection, TES did not certify it observed no VE from the wood handling baghouse stack on the following dates: 1/8/04, 1/10/04, 1/18/04, 1/20/04, 1/22/04, 1/23/04, 1/24/04, 1/26/04, 1/28/04, 1/29/04, 1/31/04, 2/5/04, 2/6/04, 2/7/04, 2/8/04, 2/11/04, 2/14/04, 2/16/04, 2/17/04, 2/18/04, 3/4/04, 4/8/04, 5/29/04, 7/7/04, 1/15/05, 1/16/05, 1/18/05, 1/24/05, 1/25/05, 1/26/05, 1/28/05, 2/20/05, 3/13/05, 5/15/05, 5/16/05, 5/21/05, 7/9/05, 8/15/05, 8/21/05, 9/27/05, 10/2/05, 10/3/05, 10/5/05, 10/19/05, 1/11/06, 3/5/06, 4/2/06, 4/30/06, and 5/17/06.
11. According to the VE logs mentioned in paragraph 10 above, TES did not certify it observed no VE from the lime storage and handling, the ash/by-products unloading, or the fuel storage systems on the following dates: 2/1/04, 6/6/04, 12/3/04, 2/18/05, 5/24/05, and 10/11/05.
12. TES's failure to record on the dates specified in paragraphs 10 and 11 above a) the color of the VE; b) whether the VE are representative of normal emissions; c) if the VE are not representative of normal operations, the cause of the abnormal VE; d) the total duration of any abnormal VE incident; and e) any corrective action taken to eliminate the abnormal VE is a violation of its Title V permit, Section 502(a) of the CAA, 40 C.F.R. § 70.7(b), and 40 C.F.R. § 52.23.

Environmental Impact of Violations

13. Violation of the opacity standards increases public exposure to unhealthy levels of particulate. Particulate emissions contribute to respiratory problems, lung damage, and premature death.
14. Violation of the SO₂ standards increases public exposure to unhealthy levels of SO₂. Long term exposure to high levels of SO₂ gas and particles can cause respiratory illness and aggravate existing heart disease. SO₂ reacts with other chemicals in the air to form tiny sulfate particles, which, when breathed, gather in the lungs and contribute to

increased respiratory symptoms and disease, difficulty in breathing, and premature death.

12/28/2006

Date

A handwritten signature in black ink, appearing to read "Steve Rothblatt", written over a horizontal line.

Stephen Rothblatt, Director
Air and Radiation Division

CERTIFICATE OF MAILING

I, Shanee Rucker, certify that I sent a Notice of Violation/Finding of Violation, No. EPA-5-07-MI-04, by Certified Mail, Return Receipt Requested, to:

Scott Wing, Plant Manager
TES Filer City Station
700 Mee Street
Filer City, Michigan 49634

I also certify that I sent copies of the Notice of Violation/Finding of Violation by first class mail to:

Janis Denman, Supervisor
Michigan Department of Environmental Quality
Air Quality Division
Cadillac District
120 West Chapin Street
Cadillac, Michigan 49601-2158

Tom Hess, Enforcement Unit Supervisor
Michigan Department of Environmental Quality
Air Quality Division
525 West Allegan
P.O. Box 30260
Lansing, Michigan 48909-7760

on the 29th day of December, 2006.

Shanee Rucker
Shanee Rucker,
Administrative Program Assistant
AECAS, (MI/WI)

CERTIFIED MAIL RECEIPT NUMBER: 7001 0320 0006 0198 8270